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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,536	01/23/2006	Tim Carroll	DAIRY88.007APC	4719

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EXAMINER

SPEER, TIMOTHY M

ART UNIT	PAPER NUMBER
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1784

NOTIFICATION DATE	DELIVERY MODE
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06/11/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/530,536	Applicant(s) CARROLL ET AL.	
	Examiner Timothy M. Speer	Art Unit 1784	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 23 and 28-49 is/are pending in the application.
- 4a) Of the above claim(s) 35-42 and 44-47 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-13, 17-19, 21, 28-34, 43, 48 and 49 is/are rejected.
- 7) ☒ Claim(s) 6-9, 16, and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. In light applicant's response filed 05/21/10, prosecution is reopened consistent with the present Office Action. The period for response is set to expire three months from the mailing date of the present Office Action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 10-13, 17-19, 21, 28-34, 43, 48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kortchack (USPN 6,117,460) in view of Michiels (GB 2367997).

4. Kortchack discloses that subjecting a meat product containing Lactobacilli to a pressure between 400 and 600 MPa at 20 degrees C for 10 minutes reduces the presence of the bacteria (col. 6, lines 1-21). Kortchack also discloses that the use of high pressure affects the 3D structure of molecules present in the food. The large molecules such as proteins, enzymes and polysaccharides are clearly more vulnerable while smaller molecules, e.g., amino acids, vitamins and other low molecular weight molecules, which are of significance in respect of taste, color and nutritional value, will remain intact (col. 2, lines 5-11).

5. Regarding claim 43, Kortchack discloses that high pressure treatment is carried out when the sample is packaged in flexible sheet material (col. 1, lines 48-53).

6. Kortchack fails to teach that treatment is carried out for "about 5 minutes or less," as presently claimed. As noted above, Kortchack teaches that varying the pressure intensity, the

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period of treatment and the time of treatment are dependent on the degree of maturing of the semi-finished product it is possible to adjust the desirable reductions in bacilli in any desired way (col. 6, lines 7-11). Accordingly, it would have been obvious to adjust the conditions such that beneficial bacilli are not inactivated and harmful ones are inactivated (or their activity is decreased, as taught by Kortschack.

7. Michiels relates to the killing of microorganisms with peroxidase under super atmospheric pressure (abstract). Michiels further discloses that super atmospheric pressure may be used to pasteurize or sterilize products such as foods (abstract). Michiels discloses that the level of super atmospheric pressure is between 100 and 1000MPa and that the exposure time is between 1 second and 5 hours (claim 10).

8. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to treat the food of Kortschack for 5 minutes (or less) in order to pasteurize the food product. It has been held that "[w]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover optimum or workable ranges through routine experimentation." See MPEP 2114.05(II) citing *In re Aller*. In the instant case, Kortschack discloses that by varying the pressure intensity, the period of treatment and the time of treatment as dependent on the degree of maturing of the semi-finished products it is possible to adjust the desirable reductions in bacilli in any desired way. In addition, Michiels discloses that it is known to treat food products with super atmospheric pressure between 100 and 1000 MPa for a time of 1 second to 5 hours. Thus, in the present case, since optimizing the time of treatment would involve no more than routine experimentation, it is the Examiner's position that the present claims are prima facie obvious in view of the applied prior art.

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Allowable Subject Matter

9. Claims 6-9, 16, 20, and 23 are allowable over the prior art of record.
10. Claims 6-9, 16, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
11. Claim 23 is allowed.

Response to Arguments

12. Rejections made in the previous Office Action but not repeated herein are withdrawn in view of applicant's response filed 10/15/09.
13. Regarding the rejection set forth herein, applicant's arguments have been considered, but are not found to be persuasive. As noted above, it is the Examiner's position that optimization of the time of treatment would have been obvious in view of the applied art. Applicant asserts that the prior art fails to disclose a "successful" treatment for a duration of less than 15 minutes. This is not persuasive, applicant has failed to demonstrate that results obtained using the presently claimed duration are unexpected. Moreover, since the claims require no degree or quantification of reduction in bacterial growth, the arguments are not persuasive.
14. Additionally, applicant asserts that the primary reference seeks to kill all bacteria, contrary to the present claims. This is not persuasive. As noted above, given the disclosure of the reference at col. 6, it would have been obvious to adjust the pressure and time to achieve any desired degree of inactivation.

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Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Speer whose telephone number is (571)272-8385. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer C. McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy M. Speer/
Primary Examiner, Art Unit 1794